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**REMARKS****Amendments of the Claims**

Claims 2-6, 8-14, 17-20 and 30-35 have been amended in the preceding Complete Listing of the Claims. As amended, the claims are supported by the specification and the original claims. Claims 2-6 and 8-48 are now pending.

**Rejection of the Claims Under 35 U.S.C. §102**

As set forth in MPEP § 2131, anticipation of a claim requires the disclosure in a single prior art reference of each element of the claim under consideration. (See also In re Spada, 15 USPQ2d 1655 (Fed. Cir., 1990); In re Bond, 15 USPQ2d 1566 (Fed. Cir., 1990.) Applicant respectfully submits that no cited reference contains all elements of the claimed invention and the claimed invention therefore is not anticipated by any of such references.

**The Brasher Reference**

Claims 1, 2, 7, 8, 10, 32 and 35-37 have been rejected under 35 U.S.C. 102(b) as allegedly anticipated by Brasher, Bryan, "Common Scents get you a head", Times Union, Albany, NY, September 20, 2001, p. C6. (hereinafter "Brasher"). Applicant respectfully traverses the rejection. Brasher does not teach each of the elements of the claimed invention for the reasons noted below.

Initially it is noted that since claims 1 and 7 have been cancelled and claims 2, 8, 10 and 35-37 depend from independent claim 40, the rejection of those claims is moot.

The rejection therefore is discussed below with regard to pending claim 32.

In its statement of rejection, the Office contended that Brasher discusses a soap "which only contained lye, distilled water, olive oil, coconut oil, palm oil, aloe vera, shea butter, and glycerin."

Applicant respectfully submits that this statement mischaracterizes Brasher. Specifically, Brasher describes two separate products, unscented soaps and scented soaps. The "unscented soaps consist only of lye, distilled water, olive oil, coconut oil, palm oil, aloe vera and shea butter" (emphasis added).

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The unscented soaps of Brasher therefore do not contain any humectant.

Claim 32, by contrast, recites in relevant part:

**“A dermatological composition comprising a humectant including at least one of urea and ammonium lactate...”**  
(emphasis added)

The dermatological composition of claim 32 thus finds no derivative basis in the disclosure of Brasher.

The second product made by the Folkes family, as described in the Brasher article, is scented soaps, described as “100 percent vegetable glycerin with a few all-natural essential oils added to create each fragrance.”

The scented soaps of Brasher thus do not contain any urea or ammonium lactate and do not contain an emollient.

By contrast, applicant’s claim 32 recites, in relevant part:

**“A dermatological composition comprising a humectant including at least one of urea and ammonium lactate, and an emollient including at least one species selected from each of the following groups (i), (ii) and (iii): (i) Shea butter, cocoa butter, or vegetable oil butter; (ii) plant-derived steroid alcohol and/or lecithin; and (iii) oxidation-stable natural oil...”**

Since Brasher does not describe a dermatological composition that comprises both a humectant and an emollient, and which is free of parabens, as required by claim 32 and all claims dependent therefrom, Brasher does not anticipate the claimed invention.

Accordingly, withdrawal of the rejection of claim 32 under 35 U.S.C. § 102(b) as being anticipated by Brasher is respectfully requested.

The Krzysik reference

Claims 1-3, 7-8, 10, 32, and 35-37 have been rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Patent No. 6,440,437 B1 (hereinafter “Krzysik et al.”).

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Applicant respectfully traverses the rejection.

As discussed below, Krzysik et al. does not teach each of the elements of the claimed invention. It again is noted that claims 1 and 7 have been cancelled and that claims 2, 8, 10 and 35-37 depend from independent claim 40. Therefore the rejection of those claims is moot. The rejection therefore is discussed below in application to pending claim 32.

As now amended, claim 32 recites:

**“A dermatological composition comprising a humectant including at least one of urea and ammonium lactate, and an emollient including at least one species selected from each of the following groups (i), (ii) and (iii): (i) Shea butter, cocoa butter, or vegetable oil butter; (ii) plant-derived steroid alcohol and/or lecithin; and (iii) oxidation-stable natural oil, and wherein said dermatological composition is free of parabens.”**

As is apparent from a review of amended claim 32, the composition recited therein does not include any glycerin humectant.

Krzysik et al. was cited for teaching of humectant glycerin and oils (“Krzysik taught that this composition could be used for lightening the skin, and because of the oils and glycerin contained in the composition, it would inherently softened the skin upon topical contact” – Office Action, page 3, lines 7-9).

Applicant’s composition as claimed in claim 32 uses entirely different ingredients (“a humectant including at least one of urea and ammonium lactate”) than the glycerin taught by Krzysik to be essential. Therefore, Krzysik et al. does not anticipate the claimed invention.

Withdrawal of the rejection of claim 32 under 35 U.S.C. § 102(b) as anticipated by Krzysik et al. therefore is warranted.

Such withdrawal is respectfully requested.

#### The Wu Reference

Claims 32 and 33 have been rejected under 35 U.S.C. 102(b) as allegedly anticipated by U.S. Pat.

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No. 6,121,317 A (hereinafter "Wu et al.").

Applicant respectfully traverses the rejection. As discussed below, Wu et al. does not teach each of the elements of the claimed invention.

As amended, claim 32 recites a dermatological composition that includes at least one of urea and ammonium lactate, in addition to at least one ingredient selected from each of groups (i), (ii) and (iii). As amended, a composition of claim 32 that comprises urea and cocoa butter must also comprise at least a plant-derived steroid alcohol and/or lecithin (group (ii)) and an oxidation-stable natural oil (group (iii)). Since Wu et al. does not describe such a composition, Wu et al. cannot anticipate claims 32 and 33.

Withdrawal of the rejection of claims 32 and 33 under 35 U.S.C. § 102(b) as anticipated by Wu et al. therefore is respectfully requested.

**Rejection of Claims Under 35 U.S.C. §103**

In the Office Action mailed July 31, 2006, claims 1-3, 5, 7-10 and 35-39 were rejected under 35 U.S.C. § 103(a) as obvious over U.S. Patent No. 6,485,733 B1 (hereinafter "Huard et al.") in view of Nagel (1977).

Claims 1 and 7 have been cancelled herein and claims 2, 3, 5, 8-10 and 35-39 now depend from independent claim 40. Accordingly, the rejection of the claims under 35 U.S.C. § 103(a) as obvious over Huard et al. in view of Nagel is moot. Withdrawal of the rejection therefore is respectfully requested.

Additionally, in the July 31, 2006 Office Action, claims 1-42 have been rejected under 35 U.S.C. § 103(a) as obvious over Huard et al. in view of Nagel and further in view of U.S. Patent No. 6,180,133 B1 (hereinafter "Quan et al."), U.S. Patent No. 5,997,889 (hereinafter "Durr et al."), U.S. Patent No. 4,233,295 (hereinafter "Hill et al.") and U.S. Application No. 2005/0048105 A1 (hereinafter "McNulty et al."). Applicant respectfully traverses such rejection.

In order for an invention to be obvious, the difference between the subject matter of the application and the prior art must be such that the subject matter as a whole would have been obvious at the time the invention was made to a person of ordinary skill in the art.

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In order to meet this standard, the combination of references must teach or suggest all of the elements of the claimed invention. See MPEP §2143. It is respectfully submitted that Huard in view of Nagel and further in view of Quan et al., Durr et al., Hill et al. and McNulty et al. does not teach or suggest all of the elements of the claimed invention. The rejection is discussed below in application to pending claims 2-48.

The independent claims of the invention recite a dermatological composition.

Claims 14 and 17 recite compositions with particular concentration ranges.

Claim 32 recites a dermatological composition that comprises at least one of urea and ammonium lactate, in addition to at least one ingredient selected from each of groups (i), (ii) and (iii), with the composition being free of parabens.

Claim 40 recites a dermatological composition that comprises at least one of urea and ammonium lactate, in addition to at least one emollient selected from the listed group.

Claim 41 recites a dermatological composition that consists essentially of at least one of urea, ammonium lactate and glycerin, in addition to at least one emollient selected from the listed group.

Claim 42 recites a dermatological composition that consists of at least one of urea, ammonium lactate and glycerin, in addition to at least one emollient selected from the listed group.

All additional claims depend from one of these claims, either directly or indirectly.

Huard et al. does not teach or suggest a composition of the claimed invention. In particular, Huard et al. does not teach or suggest a composition that contains a humectant including at least one of urea and ammonium lactate (claims 14, 17, 32, 40 and claims dependent therefrom), and Huard et al. does not teach or suggest a composition free of parabens (all claims).

It is respectfully submitted that Nagel does not teach the elements missing from Huard et al. Specifically, Nagel et al. does not teach or suggest a composition that contains a humectant including at least one of urea and ammonium lactate, nor a composition that is free of parabens. While Nagel et al. does teach that some people suffer from paraben allergies, there is no motivation to combine this teaching with the composition of Huard et al., based on the actual

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content of the references.

It is stated in the July 31, 2006 Office Action that one of skill in the art would have used the teaching of paraben allergies in Nagel et al. to provide a composition of Huard et al. that was further free of parabens. Applicant respectfully disagrees.

A close examination of the Nagel et al. reference reveals that the subject of such reference was a single patient who suffered an allergic reaction to intravenous administration of paraben.

Furthermore, such patient had previously used parabens topically, without any reaction. The Examiner's attention is respectfully directed to the text at page 1995 of Nagel et al., which states:

"He [the patient] had intermittently used paraben-containing topical cortocosteroids and lubricating creams for treatment of his atopic dermatitis; however he had never experienced adverse cutaneous reactions to any of these preparations."

Therefore Nagel et al. does not provide support for eliminating parabens from topical dermatological compositions. In fact, Nagel et al. teaches the opposite, that a patient with a known paraben allergy when the paraben is administered intravenously may have no allergy to topical administration of parabens.

Nagel et al. shows the unpredictability of paraben allergies. Nagel et al. states that "[t]he use of parabens...as preservatives in drugs, foods, and cosmetics is widespread." Since parabens are known, and admittedly widely used as preservatives, and since allergies to parabens are unpredictable, one of skill in the art would not have had motivation to combine the teachings of Nagel et al., with the composition of Huard et al.

It is respectfully submitted that Huard et al. in view of Nagel et al. does not teach or suggest all of the elements of the claimed invention, and that the references Quan et al., Durr et al., Hill et al. and McNulty et al. do not teach the elements missing from the combination of the Huard et al. and Nagel et al. references.

Further, the combination of Huard et al. in view of Nagel et al. does not yield a composition of applicants' claimed invention, since the cited references do not teach a composition that comprises urea and/or ammonium lactate, and does not teach a composition that is free of

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parabens.

Quan et al. was cited in the July 31, 2006 Office Action as teaching or suggesting the addition of ammonium lactate to a composition of Huard et al. in view of Nagel et al.

Durr et al. was cited in the July 31, 2006 Office Action as teaching or suggesting addition of shea butter to a composition of Huard et al. in view of Nagel et al.

Hill et al. was cited in the July 31, 2006 Office Action as teaching or suggesting addition of butylated hydroxytoluene to a composition of Huard et al. in view of Nagel et al.

McNulty et al. was cited in the July 31, 2006 Office Action as teaching or suggesting addition of sodium polyacrylate to a composition of Huard et al. in view of Nagel et al.

However, none of the cited references taken in combination with one another teaches or suggests a composition that comprises urea or ammonium lactate and that is free of parabens or any composition that is free of parabens.

Accordingly, the subject matter of the allowed claims is not obvious in light of the cited references.

Claims 1 and 7 have been cancelled and rejection of those claims is moot.

Withdrawal of the rejection of claims 2-6 and 8-42 under 35 U.S.C. § 103(a) as obvious over Huard et al. in view of Nagel et al. and further in view of Quan et al., Durr et al., Hill et al. and McNulty et al. therefore is respectfully requested.

#### Fee Calculation

Fees for claims of the application have previously been paid for 5 independent claims and 46 total claims. By the present Amendment, Applicant has added 1 independent claim and 4 total claims. Accordingly, additional claims fees of \$200.00 [calculated as 1 x \$100 = \$100 under 1.16(h) plus 4 x \$25 = \$100 under 1.16(h)] are presently due.

Enclosed is a Credit Card Payment Form PTO-2038 indicating a charge in the amount of \$595.00, which includes the following items:

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\$395.00 for filing of a Request for Continued Examination under 37 C.F.R. §1.114, in accordance with the fee under 37 C.F.R. §1.17(e); and

\$200.00 for added claims.

Any deficiency or additional fee payable in respect of the entry of this Amendment is hereby authorized to be charged to USPTO Deposit Account Number 08-3284 of Intellectual Property/Technology Law.

### CONCLUSION

Based on the foregoing, all of Applicant's pending claims 2-6 and 8-48 are patentably distinguished over the art, and are in form and condition for allowance. The Examiner is requested to favorably consider the foregoing and to responsively issue a Notice of Allowance.

If any issues require further resolution, the Examiner is requested to contact the undersigned attorney at (919) 419-9350 to discuss same.

Respectfully submitted,

Date: \_\_\_\_\_

October 30, 2006



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